

**Senate Bill No. 31**

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Passed the Senate      March 22, 2004

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*Secretary of the Senate*

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Passed the Assembly      March 11, 2004

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to amend Section 1789.35 of the Civil Code, relating to deferred deposit transactions, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 31, Perata. Deferred deposit transactions.

Existing law, enacted by Chapter 17 of the Statutes of 2004, regulates the fees that may be imposed by check cashers for cashing payroll checks and government checks and for setting up initial accounts and issuing optional identification cards for providing check cashing services. Existing law, enacted by Chapter 17 of the Statutes of 2004, makes these provisions operative and inoperative on December 31, 2004, except that it authorizes the Governor to issue an executive order to make the provisions operative at an earlier date if certain conditions are met.

This bill would revise these provisions to prohibit, until December 31, 2004, a check casher from, commencing March 15, 2004, charging a \$10 fee to set up an initial account and issue an optional identification card for providing check cashing services. The bill would also authorize the Governor to issue an executive order to make these provisions operative and inoperative at a date earlier than December 31, 2004, if the date is not less than 30 days after the issuance of the executive order.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1789.35 of the Civil Code, as amended by Section 6 of Chapter 17 of the Statutes of 2004, is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three dollars (\$3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license,



a California identification card, or a valid United States military identification card.

(b) (1) A check casher may charge a fee of no more than ten dollars (\$10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars (\$5).

(2) Notwithstanding the provisions of paragraph (1), commencing March 15, 2004, no check casher shall charge the fee authorized in paragraph (1) or any similar or related fee for deferred deposit transactions.

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) Subject to the limitations of Section 1789.33, a check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate deposit in an amount not to exceed 12 percent of the face value of the check or for deferred deposit in an amount not to exceed 15 percent of the face value of the check.

(e) A check casher shall not enter into an agreement for a deferred deposit with a customer during the period of time that an earlier written agreement for a deferred deposit for the same customer is in effect.

(f) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to, or governed by, Section 1719.

(g) For a transaction pursuant to Section 1789.33, a fee not to exceed fifteen dollars (\$15) may be charged for the return of a dishonored check by a depository institution. The fee may be collected by a check casher who holds a valid permit issued pursuant to Section 1789.37, when acting under the authority of that permit.

(h) No amount in excess of the amounts authorized by this section shall be directly or indirectly charged by a check casher pursuant to a deferred deposit agreement.

(i) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars (\$2,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of



California by the Attorney General in any court of competent jurisdiction. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(j) A willful violation of this section is a misdemeanor.

(k) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(l) This section shall become inoperative on December 31, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 1789.35 of the Civil Code, as amended by Section 7 of Chapter 17 of the Statutes of 2004, is amended to read:

1789.35. (a) A check casher shall not charge a fee for cashing a payroll check or government check in excess of 3 percent if identification is provided by the customer, or 3.5 percent without the provision of identification, of the face amount of the check, or three dollars (\$3), whichever is greater. Identification, for purposes of this section, is limited to a California driver's license, a California identification card, or a valid United States military identification card.

(b) A check casher may charge a fee of no more than ten dollars (\$10) to set up an initial account and issue an optional identification card for providing check cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars (\$5).

(c) A check casher shall provide a receipt to the customer for each transaction.

(d) A check casher may charge a fee for cashing a personal check, as posted pursuant to Section 1789.30, for immediate



deposit in an amount not to exceed 12 percent of the face value of the check.

(e) Any person who violates any provision of this section shall be liable for a civil penalty not to exceed two thousand dollars (\$2,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General in any court of competent jurisdiction. Any action brought pursuant to this subdivision shall be commenced within four years of the date on which the act or transaction upon which the action is based occurred.

(f) A willful violation of this section is a misdemeanor.

(g) Any person who is injured by any violation of this section may bring an action for the recovery of damages, an equity proceeding to restrain and enjoin those violations, or both. The amount awarded may be up to three times the damages actually incurred, but in no event less than the amount paid by the aggrieved consumer to a person subject to this section. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorney's fees and costs. If a court determines by clear and convincing evidence that a breach or violation was willful, the court, in its discretion, may award punitive damages in addition to the amounts set forth above.

(h) This section shall become operative December 31, 2004.

SEC. 3. Notwithstanding the December 31, 2004, operative and inoperative dates specified in the sections amended by Sections 1 and 2 of this act, the provisions of those sections may become operative and inoperative on an earlier date established by an executive order issued by the Governor if that date is not less than 30 days after the issuance of the executive order.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide adequate time for the provisions of this act to be implemented, it is necessary that this act take effect immediately.



Approved \_\_\_\_\_, 2004

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*Governor*

